KRISHNADAS A/L ACHUTAN NAIR SUING BY HIS POWER OF ATTORNEY APPLANAIDU A/L BANGARU & 3 ORS.

v.

MANIYAM A/L SAMYKANO

HIGH COURT, IPOH
DATO' PEH SWEE CHIN SCJ
[CIVIL SUIT NO. 178-82]
11 AUGUST 1993

LAND LAW: Indefensibility of title - Competing equities - Equity prevailing over common law - Absence of fraud, forgery etc. - Section 340, 340(4)(b) National Land Code.

INTERPRETATION OF STATUTES: General words following particular or specific words- Initial words followed by particular or specific words - Ejusdem generis rule.

The 1st plaintiff was the vendor of certain lands among which, was specifically Lot 3288 in the Mukim of Hutan Melintang. The 2nd, 3rd and 4th plaintiff were the purchasers of some portions of Lot 3288 from the 1st plaintiff. The defendant has been the registered owner of an undivided 610/770 share in the said Lot 3288, the other remaining undivided share has been still registered in the name of the vendor. The 1st plaintiff sold a portion of the lands he owned to 8 chettiars, which included the said Lot 3288. The 8 chettiars in turn sold the said portion to the defendant. The 2nd, 3rd and 4th plaintiffs who purchased the said portion from the 1st plaintiff claimed that they had purchased it even before it was sold to the 8 chettiars and the 8 chettiars had actual notice of the respective areas of the 2nd, 3rd and 4th plaintiffs and similarly the defendant had actual or constructive notice of such rights and bought the area in question subject to their rights.

Held:

[1] It is quite impossible to regard s. 340(4)(b) as such another exception to the indefeasibility. For one thing, the words are very vague, *viz* "operation of law", which means carrying into effect of the law or working of the law. The scope of the words is practically unlimited, given the ordinary meaning of the words and without their having any further words of limitation. If counsels contention is carried to its logical conclusion, the indefeasibility can be destroyed on any legal ground at all. It will then make nonsense of the elaborately described exceptions of fraud, forgery etc. Above all, it will practically destroy the central theme or the foundation of the Torrens System.

[2] In considering a statute, where general words follow particular or specific words, such general words take their meaning from and are presumed to be restricted to the same *genus* as those particular or specific words, therefore the ejusdem generis rule applies. This rule does not apply however when it is the other way round viz. where initial general words are followed by particular or specific words would not detract from the generality of such starting general words.

[3] The interest of the defendant facing the plaintiffs was no longer an equitable interest, but has long been elevated to a registered interest, having got on to the register. The vendors' co-plaintiffs' equitable interest could not compete with or prevail over the legal title of the defendant in the absence of any of the stated exceptions as such absence was conceded by the learned Counsel for the plaintiff, correctly from the evidence.

[Plaintiffs claims dismissed with costs].

Cases referred to:

*Thames & Mersey Marine Insurance Co. v. Hamilton Frazer & Co. [1887] 12App. Cos. 484 (**cit**)*

*Eton Rural District Council v. River Thames Conservators [1950] Ch. 540 (**cit**)*

*Candian National Railway v. Candian Steamship Lines Ltd. [1945] Ac 204 (**cit**)*

*Oh Hiam & Ors. v. Thorn Kong [1980] 2 MLJ 159, 164 (**foll**)*

Legislation referred to:

National Land Code, ss. 340,340(4)(b)

For the plaintiffs - Gurbachan Singh; M/s Bachan & Kortar

For the defendant - D.P. Vijandaran; M/s. D.P. Vijandaran Associates

JUDGMENT

Peh Swee Chin SCJ:

At the end of the hearing of this civil suit, the Court dismissed the plaintiffs' claims with costs and from this dismissal they have now appealed.

The 1st plaintiff was the vendor of certain lands among which, was specifically lot 3288 in the Mukim of Hutan Melintang, District of Lower Perak and the 2nd, 3rd and 4th plaintiffs

were the purchasers of some portions of lot 3288 from the 1st plaintiff, (the 1st plaintiff is hereinafter called the vendor and the other plaintiffs, the co-plaintiffs or 2nd, 3rd and 4th plaintiffs respectively, and all of them just as plaintiffs, whenever the context requires them or any of them to be so described).

The defendant has been the registered owner of an undivided 610/770 share in the said lot 3288, the other remaining undivided share has been still registered in the name of the vendor. Abit of history of the said lot 3288 first will not be out of order. The vendor bought from the registered owners of a rubber estate known as Melintang Rubber Estate which comprised 10 documents of title, inclusive of that one in respect of the said lot 3288. The said rubber estate thus bought had an area of 630a.3r.39p. excluding another area of slightly more than 10.5a. already compulsorily acquired by the Government. The vendor thus bought the Hutan Melintang Estate on 14 November 1960 for RM510,000 which of course shows the great purchasing power of money in those days. In P2, being the relevant sale and purchase agreement, the area of the said lot 3288 appeared to be 2a.lr.25p. Some chettiars, the registered owners of the estate from whom the vendor bought in the first place, were not the same chettiars about whom I would write a great deal later.

Then on 1 July 1963, by another agreement in writing dated 1 July 1963 (PI), the vendor sold, out of what he had purchased on 14 November 1960, an area of 260a.lr.39p. comprising portions of 4 different lots held under 4 documents of title. The purchasers this time were 8 chettiars (hereinafter the 8 chettiars). One of the 4 lots aforesaid was the said lot 3288 and the portion of la.2r.33p. in it that was sold to the 8 chettiars was slightly more than 1/2 of the said lot 3288. The said agreement dated 1 July 1963, (PI) was the crucial agreement. A total area of 260a.lr.39p. was bought by the 8 chettiars for RM175.833.28. In addition to the area aforesaid that was so purchased by the 8 chettiars from the vendor, the vendor also sold, for a further sum of RM2500, a factory (rubber factory), a smoke-house, a "packing shed", a temple, a bathroom, a "coolie line often (10) unite" and the "water supply" all located in the area sold to the 8 chettiars. The sale by the vendor to the 8 chettiars of all as stated, was stated to be free from all encumbrances.

This crucial agreement had, annexed to it, a sketch plan also signed by the 8 chettiars and the vendor respectively. The plan was delineated or demarcated by marking the portion sold in red. The portion of the said lot 3288 sold was seen to consist of one rectangle and part of another adjoining the rectangle with the number of 3288 seen on it. In this marked portion of the said 3288, marked in red, were 3 tiny rectangles which were shaded by slanting lines. These 3 shaded tiny rectangles could possibly indicate the locations of the factory and other structures, or they couldbe some other things as claimed by the vendor. PI, viz the crucial agreement, merely stated, with regard to the whole plan in these words: (Marked "Red" in the plan annexed hereto), and did not elaborate further. After the brief history of the land, the Court will now deal with the statement of claim of the vendor and his co-plaintiffs. By the amended re-amended statement of claim dated 6 March 1993, basically they alleged follows:

(a) The area of land sold by the vendor to the 8 chettiars was approximate, for example that on completion of sub-division should the area be found different from the area sold, the difference would be paid for either party by adjustment of price at the basic price of RM675 per acre.

(b) Prior to the sale of the area in question to the 8 chettiars, except in the case of the 4th plaintiff, the vendor had sold portions from the area to the 3rd plaintiff of about 1/2 acre; to one Arkany, 1/2 acre, the said Arkany having resold the same to the 4th plaintiff, on a later date viz 3 January 1964; and a portion measuring 45' x 100' to the 2nd plaintiff; but the agreements of sale to these were made subsequent to the sale to the 8 chettiars.

(c) The 8 chettiars had actual notice of the respective areas of the co-plaintiffs and similarly the defendant had actual or constructive notice of such rights and bought the area in question subject to the rights.

(d) The defendant acquired on 12 May 1973 the area in question which was in turn bought by the 8 chettiars earlier from the vendor with an undivided share of 610/770 representing the said area in the said lot 3288 transferred to the defendant by the 8 chettiars;

(e) The vendor and the co-plaintiffs claimed a declaration to the effect that by PI, the

vendor sold only 44 poles which comprised 2 portions of the said lot 3288, and that the purchase by the 8 chettiars was subject to the rights of the vendor and his co-plaintiffs and the plaintiffs claimed the order that the difference in price be paid and that the defendant do further agree to subdivision of the said lot 3288 and retransfer to the vendor and his co-plaintiffs excess obtained by the defendant with delivery of documents of title.

The defendant by defence referred to P1 and denied all the allegations of the vendor and his co-plaintiffs, averred that they had no cause of action against him and asked for all their claims to be dismissed.

The vendor gave evidence, quite confusing evidence, though the matters in the statement of claim described above could dimly be gleaned. He pointed to 2 tiny shaded rectangles in the plan annexed to P1 as the portions sold by him to the 8 chettiars. He said the 2 portions amounted to la.2r .33p. (not 44 poles, as alleged in the statement of the claim). He said he did not know the actual acreage of the said lot 3288. He referred the co-plaintiffs as "sub-purchasers" and he sold 260 acres in 4 titles. The vendor looked very confused and smiled frequently. The 2nd plaintiff gave evidence to the effect that he had purchased a portion of the said lot 3288 for RM300 from the vendor by a written agreement(P7) dated 10 November 1971.Third plaintiff said she bought her portion from the vendor on 22 October 1963, andPIO was the agreement. 4th plaintiff bought his own portion in 1971 by agreement dated 27 November 1971 from one Arkany. P13 was the agreement.

I have and will only set out very briefly the evidence of witnesses as most of which did not assist in the resolution of the issues to be decided in this case as will be seen later.

Defendant gave evidence to the effect that he bought the portion (of la.2r.33p.) of the said lot 3288 on 17 May 1973 and an undivided 610/770 share of the document in the said lot was transferred to him by the 8 chettiars, leaving a balance of 160/770 undivided share still in the name of the vendor (1st plaintiff). He described how he viewed what he bought before the purchase etc. and about the court case he filed against the 3rd plaintiff in the Magistrate's Court, about the 4th plaintiff staying in one of 4 buildings in the said lot 3288, and about his action against 4th plaintiff which he later withdrew.

I found that all agreements of sale and purchase made by the vendor's co-plaintiffs were made between them respectively and the vendor in each case, so that there was no contractual relation between the 8 chettiars and the co-plaintiffs at all, *viz.* no privity of contract between the vendor's co-plaintiffs and the 8 chettiars; likewise no such privity between the vendor's co-plaintiffs and the defendant. There could therefore be no basis for any claim for specific performance or the like by the co-plaintiffs against the defendant or the 8 chettiars.

I found that all sale and purchase agreements made by the vendor's co-plaintiffs and the vendor were all made after the date of sale and purchase agreement made by the 8 Chettiars with the vendor, therefore, the purchase by the 8 chettiars of their area of land in the said lot 3288 was not subject to any such equitable interests as could be created by the vendor for the vendor's co-plaintiffs by virtue of agreements among them. The defendant bought from the 8 chettiars the area which the latter had bought from the vendor. There was some dispute though in regard to the 2nd plaintiff named Supaya as follows.

Second plaintiff claimed he had bought his interest, not on the date mentioned in his sale and purchase agreement viz 10 November 1971 but on 3 November 1961 (viz earlier than the date of 8 chettiars' agreement). He relied on a receipt (P8) bearing this date of 3 November 1961 issued allegedly to his name. I rejected this evidence however because the identity card number stated in the receipt as belonging to the payer with a similar name was "004280' whereas 2nd plaintiffs identity card number in his agreement dated 10 November 1971 was "4009121"; and at the time of trial, the 2nd plaintiff was already 69 years old. Again, the receipt (P8) did not mention the said lot 3288 at all. This area of 45' x l00' in P7, on the other hand, was therein stated to be "situated on an area of land comprising of *(sic*) Lot 15, 17, 3288 and 2657 in the Mukim of Hutan Melintang..." Both the vendor and the 2nd plaintiff at the time of making this agreement did not even know where that plot of land bought by the 2nd plaintiff actually was. I therefore rejected the suggestion of the purchase of the interest by the 2nd plaintiff being in 1961.

I found further that what the 8 chettiars by P1 bought from the vendor was not 44 poles as alleged but la.2r.49p. out of the total area of 2a.lr. and 25p owned by the vendor then. P1 stated so clearly, no evidence could be utilized to contradict the stated area bought in lot 3288 as stated in PI. There could be no question of marginal error, the difference between the 2 areas was too high.

I further found that the 2 of the shaded rectangles stated by the vendor to represent 44 poles in the annexed plan as found inside that portion of lot 3288 bought by the 8 chettiars could not be the only parts of the said lot 3288 bought by the 8 chettiars. Such evidence also would contradict the P1.

I found further that either the vendor sold to the co-plaintiffs portions in the said lot 3288 other than the portion sold to the 8 chettiars or portions of said lot 3288 covered by the sale to the 8 chettiars twice, viz sold the same first to the 8 chettiars and then again to his co-plaintiffs, and in the event the latter case, the vendor had nothing to sell when he purported to sell to his co-plaintiffs.

I found that the defendant has been long before the filing of the present action the registered owner of what he bought from the 8 chettiars who had in turn earlier bought from the vendor, viz an undivided 610/770 share in the said lot 3288. It was briefly submitted, among other things, for the defence that the defendant's title, is 610/770 undivided share in said lot 3288 was protected by s. 340 of the National Land Code, (hereinafter the code), because of indefeasibility of title conferred by s. 340. This proved to be the pivotal point. The reply of the plaintiffs was even briefer and it was that though there was none of the circumstances or exceptions to indefeasibility such as fraud, misrepresentation, forgery, etc. as set out in s. 340 applying to this case for the benefit of the plaintiffs but this case came under s. 340(4)(b) of the Code, [hereinafter para (b) so as, to destroy such indefeasibility of the title because it was submitted vaguely that the vendor's co-plaintiffs were beneficial owners (of whatever portions in whatever parts of the said lot 3288).

The vendor and his co-plaintiffs therefore relied on para (b) to surmount the formidable indefeasibility of title by suggesting that their case fell within para (b) making practically para (b) an extra exception in addition to fraud etc. Could s. 340(4)(b) be another exception to such indefeasibility of title? The whole of s. 340 is set out below for ease of reference:

> Section 340 Registration to confer indefeasible title or interest, except in certain circumstances.
>
> (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
>
> (2) The title or interest of any such person or body shall not be indefeasible -
>
> (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
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> (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
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> (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
>
> (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in subsection (2) -
>
> (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred, and
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> (b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
>
> Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.
>
> (4) Nothing in this section shall prejudice or prevent -
>
> (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
>
> (b) the determination of any title or interest by operation of law.

In my view; it is quite impossible to regard para a (b) as such another exception to the indefeasibility. For one thing, the words are very vague, *viz* "operation of law", which mean carrying into effect of the law or working of law. The scope of the words is practically unlimited, given the ordinary meaning of the words and without their having any further word of limitation. If counsel's contention is carried to its logical conclusion, the indefeasibility can be destroyed on any legal ground at all. It will then make nonsense of the elaborately described exceptions of fraud, forgery etc. Above all, it will practically destroy the central theme or the foundation of the Torrens system.

Again, another reason is that in considering a statute, where general words follow particular or specific words, such general words take their meaning from, and are presumed to be restricted to the same genus as those particular or specific words, therefore the *ejusdem generis* rule applies. Please see *Thames & Mersey Marine Insurance Co. v. Hamilton Frazer & Co.* [1887] 12 App. Gas. 484; *Eton Rural District Council v. River Thames Conservators* [1950] Ch. 540. To avoid confusion, I must hasten to add that this rule does not apply however when e it is the other way round *viz*. where initial general words are followed by particular or specific words, for then such specific or particular words would not detract from the generality of such star ting general words, please see *Canadian National Railway v. Canadian Steamship Lines Ltd.* [1945] AC 204.

The words in my view are redundant or superflous and they merely declare what is self-evident *viz* that the indefeasibility would be terminated if any of the stated forgery etc. is proved. Precision of language is not always found in statutes, or for that matter, in documents likewise prepared by sometimes very experienced lawyers, or perhaps draftsmen of legislation prefer to *err ex abundanti cautela* rather than from the lack of caution.

The tenor of the learned counsel's submission about "competing equities", about equity prevailing in case of conflict between law and equity, and about vendor and his co-plaintiffs being beneficial owners seemed to the Court to be a clear invitation to exercise the Court's equity jurisdiction to intervene for plaintiffs' benefit, I had no doubt it was such intention of the learned Counsel. I feel that I should not treat such imprecise submission by just ruling just as imprecisely that no ground existed for resorting to equity jurisdiction.

There have always frequently been strong reservations about equity's role when it crosses the path of the Torrens system on which the code is based with the use of words like distorting or even supplanting the Code frequently in whispered terms from many quarters; strongly reminiscent of those olden days in the legal system when the common law courts such as Courts of Common Pleas, King's Bench and Exchequer had such strong reservations against the Court of Chancery before the fusion of functions of all the courts. In my view, the true nature of equity's intervening role in transactions covered by the Code has been explained succinctly by Lord Russel of Killowen in *Oh Hiam Ors. v. Tham Kong* [1980] 2 MLJ 159,164 as follows:

> Apart from authority their Lordships would not expect that the intervention of equity by a remedy in personam based upon a transaction to which the plaintiff and defendant were parties would be ousted by such provisions. The Torrens system is designed to provide simplicity and certitude in transfers of land, which is amply achieved without depriving equity of the ability to exercise its jurisdiction in personam on grounds of conscience. In the instant case the defendant could have shown an indefeasible title had he sold lot 3660, a step which he could not take because he undertook to the Court not to: the Court could have granted an injunction against sale, and that could scarcely have been described as an order inconsistent with his indefeasible title. If the registered proprietor were a trustee, his indefeasible title would not have precluded intervention by the Court in execution of the trust: under the then Land Code there was no express provision for registration as trustee. The indefeasible title would not preclude an order for specific performance of a contract for sale by the proprietor. All these are instances of equity acting in personam, and indeed the order in the instant case may be described as an order in personam that the registered proprietor should defeat his own title.

Not being didactic but from my experience in listening often to submissions in Court, the expression of remedy in personam does not appear to be fully realized semantically. The preposition "in" means "against" in Latin also, so that the expression simply means a relief

granted against a person personally, and that, most often, is an injunction, mandatory or otherwise, enforceable by imprisonment for contempt for its default. Thus, in the example given by Lord Russell, the registered proprietor could not sell, not because his indefeasible title was i mpaired but because equity stopped him from doing so.

The Court would try to fit the case of the plaintiffs into any of those several pigeon holes whereby equity could possibly step in to intervene on their behalf.

First, about learned counsel's vague submission about "competing equities", and about equity prevailing over common law. Putting it at the highest, I presumed the reference was to the equitable interests which the vendor's co-plaintiffs could have acquired on buying by those agreements various portions of the said lot 3288. Assuming only for argument that such various portions were contained in the area bought by the 8 chettiars in the said lot 3288 in respect of which the defendant was their assign (viz. assignee), the interest of the defendant facing the plaintiffs was no longer an equitable interest, but has long been elevated to a registered interest, having got on to the register. The vendor's co-plaintiffs equitable interest could not compete with or prevail over the legal title of the defendant in the absence of any of the stated exceptions as such absence was conceded by the learned Counsel for the plaintiff, correctly from the evidence.

About the most well-known equity's remedy of specific performance with injunction, if necessary, in aid of it, as stated earlier there was no privity of contract between the vendor's co-plaintiffs and the 8 chettiars, consequently and in fact none between them and the defendant who was the assignee of the 8 chettiars of that area in the said lot 3288, as described in P1.

There was privity of contract between the 8 chettiars and the vendor, but it was crystal clear that the vendor did not seek specific performance against the 8 chettiars.

What in fact the vendor and his co-plaintiffs sought was declarations that the purchase by the 8 chettiars was subject to the prior rights of the vendor's co-plaintiffs etc. How was the Court to regard these declaratory prayers? In form, this action was dressed like one for the discretionary remedy of the court to declare a legal right on given and agreed facts but in this case there were no such agreed or given facts. In fact the parties herein were embroiling themselves in a dispute over a number of facts. Therefore, the nature of this action was definitely not of this type. In the end, this court could only regard these prayers as framed simply asking for decisions from the court on facts and law.

The next and the last possible remedy in equity which the vendor alone (but not the co-plaintiffs) could claim could be a rectification of the contract (PI) on ground of both parties being under a common mistake as to the portion in the said lot 3288 sold and transferred to the 8 chettiars. This could not be available to the vendor for his statement of claim was not cast in this manner, and even if it was, there was no clear evidence at all as to which co-plaintiff bought which portion in which part of the said lot 3288. Even if there were such clear evidence, the 8 chettiars had not been cited as co-defendants, so that the issue of common mistake could never be aired. There was no way that equity could intervene also for the plaintiffs.

It was a sobering thought for the Court that our Parliament came fast and thick with anti-fragmentation laws in regard to estates sold rather in a hurry by British owners in these days, otherwise allour Courts would have been clogged with cases similar to the one in hand for a long time indeed.

Because of what has been said above, I was driven to dismiss the plaintiffs' claim with costs.